

PT 98-9

Tax Type: PROPERTY TAX

Issue: Educational Ownership/Use

**STATE OF ILLINOIS
DEPARTMENT OF REVENUE
OFFICE OF ADMINISTRATIVE HEARINGS
CHICAGO, ILLINOIS**

**ELGIN
ACADEMY,
APPLICANT**

v.

**ILLINOIS DEPARTMENT
OF REVENUE**

No. 95-45-68

**Real Estate Tax Exemption for
1995 Assessment Year**

P.I.N: 06-13-153-010

Kane County Parcel

**Alan I. Marcus,
Administrative Law Judge**

RECOMMENDATION FOR DISPOSITION

APPEARANCE: Mr. James Bolz of McCuaig, Haeger, Bolz & McCarty on behalf of the Elgin Academy.

SYNOPSIS: This proceeding raises the limited issue of whether real estate identified by Kane County Parcel Index Number 06-13-153-010 (hereinafter the "subject property" or the "subject parcel") should be exempt from 1995 real estate taxes under 35 ILCS 200/15-35.¹ In relevant part, that statute provides as follows:

1. In People ex. rel. Bracher v. Salvation Army, 305 Ill. 545 (1922), the Illinois Supreme Court held that the issue of property tax exemption necessarily depends on the statutory provisions in force during the time for which the exemption is claimed. This applicant seeks exemption from 1995 real estate taxes. Therefore, the applicable provisions are those found in the Property Tax Code, 35 ILCS 200/1 *et seq.*

All property donated by the United States for school purposes and all property of schools, not sold or leased or otherwise used with a view to profit, is exempt [from real estate taxation], whether owned by a resident or non- resident of this State or by a corporation incorporated in any state of the United States. Also exempt is:

(b) property of schools on which the schools are located and any other property of schools used by the schools exclusively for school purposes, including, but not limited to, student residence halls, dormitories and other housing facilities for students and their spouses and children, staff housing facilities, and school-owned and operated dormitory or residence halls occupied in whole or in part by students who belong to fraternities, sororities, or other campus organizations.

(c) property donated, granted, received or used for public school, college, theological seminary, university, or other educational purposes, whether held in trust or absolutely.

The controversy arises as follows:

On April 11, 1995, the Elgin Academy (hereinafter the "Academy" or the "applicant") filed an Application for Property Tax Exemption with the Kane County Board of Review (hereinafter the "Board"). (Dept. Group. Ex. No. 1, Docs. A and B). The Board then reviewed the application and subsequently recommended to the Illinois Department of Revenue (hereinafter the "Department") that the requested exemptions be approved. The Department rejected this recommendation by issuing a certificate finding that the subject parcel was not in exempt use. (Dept. Group Ex. No. 2).

Applicant filed a timely request for hearing as to this denial on January 19, 1996 (Dept. Ex. No. 3) and thereafter presented evidence at a formal administrative hearing. Following

submission of all evidence, and a careful review of the record, I recommend that the subject property not be exempt from 1995 real estate taxes.

FINDINGS OF FACT:

1. The Department's jurisdiction over this matter and its position therein, namely that the subject parcel was not in exempt use during 1995, are established by the admission into evidence of Dept. Group Ex. No. 1 and Dept. Ex. No. 2.
2. Applicant was originally created pursuant to an enactment of the General Assembly which authorized certain named individuals to create:

a body corporate and politic, by the name and style of "The Trustees of the Elgin Academy," and by that style and name to have perpetual succession; the said institution being designated to promote the cause of education and improvement in literature, and be located at or near the town of Elgin, in Kane County.

Applicant Group Ex. No. 4A

3. The Academy subsequently incorporated under the General Not For Profit Corporation Act of Illinois. Its Amended and Restated By-Laws, adopted on June 14, 1993, recite *inter alia* that: (1) its purposes are to operate and maintain a private educational institution at Elgin, Illinois and promote the cause of education and improvement of literature; (2) it shall have no members; (3) its general business affairs shall be governed by a Board of Trustees, which shall have between 15 and 20 members; and (4) such trustees shall not receive any salary or other compensation in exchange for serving as trustees but may receive remuneration for serving the Academy in another capacity. Applicant Group Ex. No. 4A.

4. The Internal Revenue Service granted applicant exemption from federal income tax in July of 1941. The Service granted this exemption pursuant to Section 501(c)(3) of the Internal Revenue Code and based same on its conclusion that applicant qualified as an organization described in Sections 509(a)(1) and 170(b)(1)(A)(ii) thereof. Applicant Ex. No. 5.
5. The Department has exempted applicant from Use and related taxes in the State of Illinois. Dept. Group Ex. No. 1, Doc. A.
6. The subject parcel is located at 162 College, Elgin, IL 60120. It is stationed across the street from the main quadrangle of applicant's campus. Tr. p. 11.
7. The subject property is situated on a 130' x 130' lot. It is improved with a single family home. Dept. Group Ex. No. 1.
8. The home, which is divided into two stories, occupies a total of 2,500 square feet.
Id.
9. Applicant first acquired ownership the subject parcel sometime in 1986. Tr. pp. 11-12.
10. The Elgin County Assessor (hereinafter the "Assessor") carried the subject property as exempt from 1986 until applicant sold the property to Seldon and Gabriel Edwards in April of 1993. Tr. pp. 12, 18-19; Applicant Ex. No. 10.
11. Applicant accomplished this sale via a trust agreement dated April 1, 1993 that named the Edwards as beneficiaries of the trust. Applicant Ex. No. 8; Tr. pp. 11-12.
12. The Edwards continued to reside in the subject premises and maintained a beneficial interest therein after the date of sale. Applicant Ex. No. 9.

13. The Assessor notified the Edwards that the subject property was being placed back on the tax rolls via correspondence dated April 2, 1993. Applicant Ex. No. 10.
14. Seldon Edwards, who had been serving as applicant's headmaster, left his position sometime in early 1994. He and his wife assigned their remaining interest in the subject property to applicant on April 18, 1994. Tr. p. 13; Applicant Ex. No. 9.
15. During 1995, applicant used the subject property to provide housing for its Director of Marketing and Admissions, Mark Campbell (hereinafter "Campbell") and his family. Tr. p. 14.
16. Applicant allowed Campbell to live in the subject premises because it was vacant at the time he and his family moved from the East Coast. The Academy did not, however, require Campbell to reside in the subject premises as a condition of his employment. Tr. p. 17.
17. Campbell's occupancy was not governed by a written lease. Nor was he required to pay rent to the Academy. He was, however, obligated to pay applicant approximately \$550.00 per month, all of which went to offset or reimburse utility payments made by the applicant. Tr. pp. 14-15, 22.
18. Campbell remained in applicant's employ throughout the 1995 assessment year. However, he would have been required to vacate the subject property if he were not so employed. Tr. p. 22.
19. Campbell's position as Director of Marketing and Admissions entails responsibility for: (1) meeting people, including parents of prospective students, at the Academy at various times, including evenings and weekends; (2) giving an

unspecified number of tours of the Academy property; (3) disseminating literature and other information about the Academy in person as well as via telephone and computer; (4) introducing parents and prospective students to faculty members when possible; (5) placing advertisements for the Academy in newspapers, magazines, etc; and (6) setting up a web page. Tr. pp. 17, 23-24.

20. Campbell performs these duties pursuant to a contract that runs from July 1 through June 30 of each year. This contract does not mention the subject premises. Tr. p. 24.
21. Campbell hosted an open house during 1995. This event was held at the subject premises and open to anyone who expressed an interest in the Academy. Tr. p. 21.
22. Campbell also held a meeting for the Academy's faculty and staff at the subject premises during 1995. *Id.*
23. Applicant held an unspecified number of meetings and social events, including an opening of school party, at the subject property in 1995. It did not, however, lease the property or otherwise make it available to third parties. Tr. p. 17, 21.

CONCLUSIONS OF LAW:

An examination of the record establishes that this applicant has not submitted evidence and argument sufficient to warrant exempting the subject parcel from 1995 real estate taxes. Accordingly, under the reasoning given below, the Department's determination that said parcel does not satisfy the statutory requirements set forth in 35 ILCS 200/15-35 should be affirmed. In support thereof, I make the following conclusions:

Article IX, Section 6 of the Illinois Constitution of 1970 provides as follows:

The General Assembly by law may exempt from taxation only the property of the State, units of local government and school districts and property used exclusively for agricultural and horticultural societies, and for school, religious, cemetery and charitable purposes.

The power of the General Assembly granted by the Illinois Constitution operates as a limit on the power of the General Assembly to exempt property from taxation. The General Assembly may not broaden or enlarge the tax exemptions permitted by the Constitution or grant exemptions other than those authorized by the Constitution. Board of Certified Safety Professionals v. Johnson, 112 Ill.2d 542 (1986). Furthermore, Article IX, Section 6 is not a self-executing provision. Rather, it merely authorizes the General Assembly to confer tax exemptions within the limitations imposed by the Constitution. Locust Grove Cemetery of Philo, Illinois v. Rose, 16 Ill.2d 132 (1959). Moreover, the General Assembly is not constitutionally required to exempt any property from taxation and may place restrictions or limitations on those exemptions it chooses to grant. Village of Oak Park v. Rosewell, 115 Ill. App.3d 497 (1st Dist. 1983).

Pursuant to its Constitutional mandate, the General Assembly enacted the Property Tax Code, 35 ILCS 200/1 *et seq.* The presently relevant portions of that statute are found in Section 200/15-35, which states in pertinent part that:

All property donated by the United States for school purposes and all property of schools, not sold or leased or otherwise used with a view to profit, is exempt [from real estate taxation], whether owned by a resident or non- resident of this State or by a corporation incorporated in any state of the United States. Also exempt is:

(b) property of schools on which the schools are located and any other property of schools used by the schools exclusively for school purposes, including, but not limited to, student residence

halls, dormitories and other housing facilities for students and their spouses and children, staff housing facilities, and school-owned and operated dormitory or residence halls occupied in whole or in part by students who belong to fraternities, sororities, or other campus organizations.

(c) property donated, granted, received or used for public school, college, theological seminary, university, or other educational purposes, whether held in trust or absolutely.

Our courts have established that the following rules of statutory construction apply in all property tax exemption cases: first, a statute exempting property or an entity from taxation must be strictly construed against exemption, with all facts construed and debatable questions resolved in favor of taxation (People ex. rel. Nordlund v. Home for the Aged, 40 Ill.2d 91 (1968)); second, the party seeking exemption bears the burden of proof (Metropolitan Sanitary District of Greater Chicago v. Rosewell, 133 Ill. App.3d 153 (1st Dist. 1985)); third, such party can not obtain exemption unless it presents clear and convincing evidence of conformity with all applicable statutory and common law requirements therefor (*id*); and fourth, the word "exclusively," when used in Section 200/15-35 and other tax exemption statutes, means "the primary purpose for which property is used and not any secondary or incidental purpose" (Pontiac Lodge No. 294, A.F. and A.M. v. Department of Revenue, 243 Ill. App.3d 186 (4th Dist. 1993)).

Here, the Assessor carried the subject parcel as exempt from an unspecified date in 1986 until April 2, 1993. However, "a determination of exempt or taxable status for one year is not *res judicata* for any other tax year even where ownership and use remain the same." Jackson Park Yacht Club v. Department of Local Government Affairs, 93 Ill. App.3d 542 (1st Dist. 1981).

The Department based the instant denial strictly on lack of exempt use rather than lack of exempt ownership and use. Thus, while applicant may satisfy the organizational and definitional requirements for "school" status² under Section 200/15-35, such status does not *ipso facto* relieve applicant of its burden of proving that the subject parcel was actually used for exempt purposes during 1995. Cf. Skil Corporation v. Korzen, 32 Ill.2d 249 (1965); Comprehensive Training and Development Corporation v. County of Jackson, 261 Ill. App.3d 37 (5th Dist. 1994). Therefore, any remaining analysis must focus on the extent to which applicant has sustained that burden.

Our courts have rendered a line of decisions holding that the residences of domestic employees, maintenance personnel and the like are not subject to exemption unless one of two conditions is met: first, that the resident-employee performs an exempt function, such as educational or religious duties, and is required by those same exempt duties to live in the residence; or, second, that the resident-employee performs his duties in furtherance of the institution's exempt purpose in the building. McKenzie v. Johnson, 98 Ill.2d 89 (1983); Benedictine Sisters of the Sacred Heart v. Department of Revenue, 155 Ill. App.3d 325 (2nd Dist. 1987); Lutheran Child and Family Services of Illinois v. Department of Revenue, 160 Ill. App.3d 420 (2nd Dist. 1987); Cantigny Trust v. Department of Revenue, 171 Ill. App. 3d 1082

2. For analysis of this definition and its application in the exemption context, *See*, People ex rel. McCullough v. Deutsche Evangelisch Lutherisch Jehova Gemeinde Ungeanderter Augsburgischer Confession, 249 Ill. 132 (1911); People v. Trustees of Schools, 364 Ill. 131 (1936); People ex rel Brenza v. Turnverein Lincoln, 8 Ill. 2d 188 (1956); Illinois College of Optometry v. Lorenz, 21 Ill. 219 (1961); Coyne Electrical School v. Paschen, 12 Ill.2d 387 (1957); Board of Certified Safety Professionals of the Americas v. Johnson, 112 Ill. 2d 542 (1986); American College of Chest Physicians v. Department of Revenue, 202 Ill. App.3d. 59 (1st Dist. 1990); Winona School of Professional Photography v. Department of Revenue, 211 Ill. App.3d 565 (1st Dist. 1991).

(2nd Dist. 1988); Girl Scouts of DuPage County Council, Inc. v. Department of Revenue, 189 Ill. App.3d 858 (1989).

The present record contains abundant evidence establishing that the resident-employee's use did not satisfy either of the above criteria. Applicant's sole witness, Elizabeth Gleason, testified that the Academy allowed the resident-employee, Campbell, to move into the subject premises because it was vacant at the time when he and his family moved from the East Coast. (Tr. p. 17). She further testified that Campbell was not required to live in the subject premises as a condition of his employment and that his employment contract did not even mention same. (Tr. pp. 17, 24).

These considerations outweigh the testimony establishing that Campbell would have been required to vacate the subject premises upon termination of his employment. As no written document governed Campbell's occupancy, this testimony is inherently speculative. More importantly, the present record establishes that Campbell in fact remained in applicant's employ throughout 1995 and was categorically *not* required to live in the subject premises during that time. Based on this and all the aforementioned circumstances, I must conclude that his residence therein was a matter of convenience rather than necessity. *See, Lutheran Child and Family Services of Illinois v. Department of Revenue*, *supra* at 426. Therefore, any uses associated therewith do not satisfy the first of the two requirements articulated in McKenzie v. Johnson, *supra* and its progeny.

The second prong of this test requires that the resident-employee perform his duties in furtherance of the institution's exempt purpose in the building. This record does establish that Campbell in fact used the subject premises for an open house and at least one faculty meeting during 1995. (Tr. p. 21). It also indicates that applicant used said premises to hold an opening of

school party in that year. (*Id*). However, Ms. Gleason admitted that she really could not speak to other uses due to lack of direct knowledge. (*Id*).

This admission casts doubts as to whether the above uses were anything but occasional or incidental to those associated with Campbell's non-exempt private residence. Considering that such doubts must be resolved in favor of taxation (*see, supra* at p. 8-9), the conclusion that applicant has failed to prove exempt use by clear and convincing evidence appears inescapable. Therefore, the Department's determination, which denied exemption based on lack of such use, should be affirmed.

WHEREFORE, for all the above-stated reasons, it is my recommendation that Kane County Parcel Index Number 06-13-153-010 not be exempt from 1995 real estate taxes.

03/23/98

Date

Alan I. Marcus,
Administrative Law Judge